

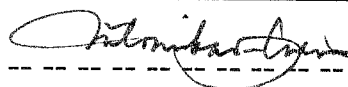
EN BANC

**G.R. No. 197743 – Heirs of Jose Mariano and Helen S. Mariano, represented by Danilo David S. Mariano, Mary Therese Irene S. Mariano, Ma. Catalina Sophia S. Mariano, Jose Mario S. Mariano, Ma. Lenor S. Mariano, Macario S. Mariano and Heirs of Erlinda Mariano-Villanueva, represented by this act by Irene Lourdes M. Villanueva, through her Attorney-In-Fact Editha S. Santuyo and Benjamin B. Santuyo, petitioners vs. City of Naga, respondent.**

**Promulgated:**

October 18, 2022

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**SEPARATE OPINION**

**GESMUNDO, C.J.:**

This case involves a parcel of land allegedly donated to the City of Naga. The City Mayor of Naga, Monico Imperial (*Mayor Imperial*), and the registered landowners, Macario Mariano (*Macario*) and Jose Gimenez (*Gimenez*), executed a Deed of Donation on August 16, 1954, whereby the latter donated five hectares of land (*subject property*) to the City of Naga. Two hectares of the subject property were to be used as the City Hall site; the other two hectares for the public plaza, and the remaining hectare for the public market.<sup>1</sup> The City of Naga, however, did not comply with the requirements for a valid donation, hence, petitioners claim that the donation was void. The Court initially granted the petition because there was indeed an invalid transfer of land.

The *ponencia* partially denies the second motion for reconsideration declaring that petitioners' claim over the subject property is not barred by laches because they continuously assailed the validity of the donation of land. Thus, since there was an invalid donation, petitioners should reclaim the land given to the City of Naga. However, the *ponencia* proposes, in the same case, that if the properties are not anymore feasible to be returned to petitioners since government buildings are already erected thereon, the government should simply pay petitioners just compensation, citing the case of *Secretary of DPWH v. Spouses Tecson*<sup>2</sup> (*Secretary of DPWH*). It was further stated that

<sup>1</sup> *Heirs of Mariano v. City of Naga*, 827 Phil. 531, 538-539 (2018).

<sup>2</sup> 713 Phil. 55, 70 (2013).



the case should be remanded to the Regional Trial Court (RTC) for the determination of just compensation.

While I agree with the *ponencia* that just compensation should be awarded to petitioners, I have some reservations whether the determination of just compensation should be conducted in the same case when remanded to the trial court, bearing in mind *Forfom Development Corp. v. Philippine National Railways*<sup>3</sup> (*Forfom*).

One of the inherent powers of the State is the power of eminent domain. It has been defined as “the right of a government to take and appropriate private property for public use, whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor.” It has also been described as the power of the State or its instrumentalities to take private property for public use and is inseparable from sovereignty and inherent in government.<sup>4</sup>

Once the State decides to exercise its power of eminent domain, the power of judicial review becomes limited in scope, and the courts will be left to determine the appropriate amount of just compensation to be paid to the affected landowners.<sup>5</sup> Pursuant thereto, Rule 67 of the Rules of Court (*the “Rules”*) provides the manner by which the government may exercise its power of eminent domain. **Notably, the Regional Trial Court has “original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners.”**<sup>6</sup>

In *Metropolitan Cebu Water District v. J. King and Sons Co., Inc.*,<sup>7</sup> the Court explained the two stages in an expropriation proceeding under Rule 67 of the Rules of Court:

In an expropriation proceeding there are two stages: first, is the determination of the validity of the expropriation, and second, is the determination of just compensation. In *Tan v. Republic*, we explained the two (2) stages in an expropriation proceeding to wit:

(1) Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, with condemnation declaring that the plaintiff has a lawful right to take the property sought to be

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<sup>3</sup> 594 Phil. 10 (2008).

<sup>4</sup> *Masikip v. City of Pasig*, 515 Phil. 364, 373 (2006).

<sup>5</sup> *Spouses Yusay v. Court of Appeals*, 662 Phil. 634, 649 (2011).

<sup>6</sup> *Land Bank of the Philippines v. Manzano*, 824 Phil. 339, 368 (2018).

<sup>7</sup> 603 Phil. 471 (2009).

condemned for the public use or purpose described in the complaint, upon payment of just compensation. An order of expropriation is final. An order of dismissal, if this be ordained, would be a final one, as it finally disposes of the action and leaves nothing more to be done by the courts on the merits. The order of expropriation would also be a final one for after its issuance, no objection to the right of condemnation shall be heard. The order of expropriation may be appealed by any party aggrieved thereby by filing a record on appeal.

(2) Determination by the court of the just compensation for the property sought to be taken with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before the court and findings of the commissioners would likewise be a final one, as it would leave nothing more to be done by the court regarding the issue. A second and separate appeal may be taken from this order fixing the just compensation.<sup>8</sup> (Citations omitted)

Nevertheless, even if the State does not institute an action for expropriation under Rule 67, the owner of the private property is still entitled to just compensation, as long the State took such private property. Article III, Section 9 of the 1987 Constitution provides that “private property shall not be taken for public use without just compensation.” The fair market value of the property must be paid to the owners thereof, which has been defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker’s gain, but the owner’s loss. The word “just” is used to intensify the meaning of the word “compensation” and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample.<sup>9</sup>

Accordingly, if the State takes the land of a person under its power of eminent domain and the State did not institute an action for expropriation under Rule 67, the landowner’s remedy is to institute an action for inverse condemnation proceeding. In said action, extensive presentation of evidence can be undertaken so that just compensation for petitioners are properly arrived at.

The action for inverse condemnation was explained in *National Power Corp. v. Heirs of Sangkay*:<sup>10</sup>

The action to recover just compensation from the State or its expropriating agency differs from the action for damages. The former, also known as *inverse condemnation*, has the objective to recover the value of

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<sup>8</sup> Id. at 483-484.

<sup>9</sup> *Land Bank of the Philippines v. Manzano*, supra at 369-370.

<sup>10</sup> 671 Phil. 569 (2011).

property taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. Just compensation is the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word *just* is used to intensify the meaning of the word *compensation* in order to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. On the other hand, the latter action seeks to vindicate a legal wrong through damages, which may be actual, moral, nominal, temperate, liquidated, or exemplary. When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the Civil Code, and the exercise results to the damage of another, a legal wrong is committed and the wrongdoer is held responsible.

The two actions are radically different in nature and purpose. The action to recover just compensation is based on the Constitution while the action for damages is predicated on statutory enactments. Indeed, the former arises from the exercise by the State of its power of eminent domain against private property for public use, but the latter emanates from the transgression of a right. The fact that the owner rather than the expropriator brings the former does not change the essential nature of the suit as an inverse condemnation, for the suit is not based on tort, but on the constitutional prohibition against the taking of property without just compensation. It would very well be contrary to the clear language of the Constitution to bar the recovery of just compensation for private property taken for a public use solely on the basis of statutory prescription.<sup>11</sup> (Emphasis supplied, citations omitted)

As explained above, inverse condemnation is an action instituted by a private individual to recover the value of property taken in fact by the government, even though no formal exercise of the power of eminent domain was attempted by the taking agency. The purpose of the action is to acquire just compensation for the full and fair equivalent of the property taken from its owner by the expropriator. The fact that the owner, rather than the expropriator, brings the action does not change the essential nature of the suit as an inverse condemnation. In *Felisa Agricultural Corp. v. National Transmission Corp.*,<sup>12</sup> it was explained that property owners usually initiate inverse condemnation proceedings when the government does not commence expropriation proceedings to acquire the privately-owned lands.<sup>13</sup>

Accordingly, when the power of eminent domain is exercised by the State, the latter can either institute an action for expropriation under Rule 67 of the Rules, or the private landowner can commence inverse condemnation proceeding, which is treated similarly as an action for expropriation under

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<sup>11</sup> Id. at 591-593.

<sup>12</sup> 834 Phil. 861 (2018).

<sup>13</sup> Id. at 878.

Rule 67. In any case, both these actions are within the original and exclusive jurisdiction of the RTC.

In *Forfom*, it was underscored that if a private person, whose property was taken by the State under its power of eminent domain, fails to institute an action to claim just compensation, *i.e.*, inverse condemnation proceeding, the land cannot be returned to such person even if he/she files a complaint for recovery of possession of real property;<sup>14</sup> rather, the land shall remain with the State, to wit:

In the case at bar, the expropriator (PNR) entered the property of Forfom, a private land. The entrance into Forfom's property was permanent, not for a fleeting or brief period. PNR has been in control, possession and enjoyment of the subject land since December 1972 or January 1973. PNR's entry into the property of Forfom was with the approval of then President Marcos and with the authorization of the PNR's Board of Directors. The property of Forfom measuring around eleven hectares was devoted to public use – railroad tracks, facilities and appurtenances for use of the Carmona Commuter Service. With the entrance of PNR into the property, Forfom was deprived of material and beneficial use and enjoyment of the property. It is clear from the foregoing that there was a taking of property within the constitutional sense.

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It can be gathered from the records that Forfom accepted the fact of the taking of its land when it negotiated with PNR for just compensation, knowing fully well that there was no expropriation case filed at all. Forfom's inaction for almost eighteen (18) years to question the absence of expropriation proceedings and its discussions with PNR as to how much petitioner shall be paid for its land preclude it from questioning the PNR's power to expropriate or the public purpose for which the power was exercised. In other words, it has waived its right and is estopped from assailing the takeover of its land on the ground that there was no case for expropriation that was commenced by PNR.

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x x x As ruled above, Forfom's inaction on and acquiescence to the taking of its land without any expropriation case being filed, and its continued negotiation with PNR on just compensation for the land, prevent him from raising any issues regarding the power and right of the PNR to expropriate and the public purpose for which the right was exercised. The only issue that remains is just compensation. Having no right to further question PNR's act of taking over and the corresponding public purpose of the condemnation, Forfom cannot now object to PNR's lease of portions of the land to third parties. The leasing out of portions of the property is already a matter between PNR and third persons in which Forfom can no longer participate. The same

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<sup>14</sup> *Forfom Development Corp. v. Philippine National Railways*, supra note 3 at 30-31.

no longer has any bearing on the issue of just compensation.<sup>15</sup> (Citations omitted)

While the Court held in *Forfom* that the private landowner was entitled to just compensation, it also underscored that the determination of just compensation should not be adjudicated in the complaint for recovery of possession of real property instituted by the landowner. Instead, the determination of just compensation should be decided in a separate action for expropriation – particularly, in the RTC – which can appoint commissioners to duly determine such just compensation. The State, in *Forfom*, was directed to institute a separate expropriation action over the land in question, to wit:

Under Section 5, [Rule 67] of the 1997 Rules of Civil Procedure, the court shall appoint not more than three competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property. Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, “trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all.”

**In the case before us, the trial court determined just compensation, but not in an expropriation case.** Moreover, there was no appointment of commissioners as mandated by the rules. The appointment of commissioners is one of the steps involved in expropriation proceedings. What the judge did in this case was contrary to what the rules prescribe. The judge should not have made a determination of just compensation without first having appointed the required commissioners who would initially ascertain and report the just compensation for the property involved. This being the case, we find the valuation made by the trial court to be ineffectual, not having been made in accordance with the procedure provided for by the rules.

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Admittedly, the PNR’s occupation of Forfom’s property for almost eighteen (18) years entitles the latter to payment of interest at the legal rate of six (6%) percent on the value of the land at the time of taking until full payment is made by the PNR.

For almost 18 years, the PNR has enjoyed possession of the land in question without the benefit of expropriation proceedings. It is apparent from its actuations that it has no intention of filing any expropriation case in order

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<sup>15</sup> Id. at 27-31.

to formally place the subject land in its name. All these years, it has given Forfom the runaround, failing to pay the just compensation it rightly deserves.  
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**WHEREFORE**, the instant petition is **PARTIALLY DENIED** insofar as it denies Forfom Development Corporation's prayer for recovery of possession (in whole or in part) of the subject land, unearned income, and rentals. The petition is **PARTIALLY GRANTED** in that attorney's fees and litigation expenses in the amounts of [P]100,000.00 and [P]50,000.00, respectively, are awarded. **The Philippine National Railways is DIRECTED to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to its owner may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent per annum from the time of taking until full payment is made.** As to the claim for the alleged damaged crops, evidence of the same, if any, may be presented before the expropriation court. No costs.

**SO ORDERED.**<sup>16</sup> (Emphases supplied)

Verily, in *Forfom*, instead of remanding the case to the RTC involving the complaint for recovery of possession of real property, the Court directed the Philippine National Railways to institute a separate expropriation action to determine the just compensation due to the landowner. To determine just compensation, the Court took into consideration the importance of instituting a separate action for expropriation in the RTC, which has the power to appoint commissioners to establish the amount of such compensation in an action for expropriation.

Accordingly, I find that the Court in this case should adopt the established procedure provided in *Forfom*. To recapitulate, in the March 12, 2018 Decision, the Court stated that this case stemmed from an unlawful detainer case instituted by petitioners against the City of Naga before the Municipal Trial Court (*MTC*):

When the City did not comply, petitioners, as heirs of Jose and Erlinda, filed a Complaint for **unlawful detainer** against the City, docketed as Civil Case No. 12334.

#### The Unlawful Detainer Case

In their Complaint, filed on February 12, 2004, petitioners asked the MTC to order the City and all agencies, instrumentalities or offices claiming rights under it, including the LTO, NBI, DOLE, PPC and the Fire Department, to vacate the subject property, shown in the Sketch Plan as Blocks 25 and 26

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<sup>16</sup> Id. at 32-35.

(LRC) Psd-9674, and to return possession thereof to them. In addition to attorney's fees, they asked the City to pay them a monthly rental of P2.5 million from the date it received the demand to vacate until it surrendered possession, as reasonable compensation for the use of the property.<sup>17</sup> (Citations omitted)

Like *Forfom*, the petitioners in this case did not institute an inverse condemnation proceeding to claim just compensation due to the taking of the State. Rather, they merely instituted an action for unlawful detainer before the MTC.

Evidently, the MTC does not have jurisdiction over an action for expropriation. Again, the original and exclusive jurisdiction to determine just compensation is lodged exclusively with the RTC, which has the authority to appoint commissioners. In this case, the court which exercised original jurisdiction over the complaint for unlawful detainer was the MTC; the RTC only exercised appellate jurisdiction when the parties appealed the decision of the MTC.

Accordingly, I cannot find sufficient basis to simply remand this case of unlawful detainer for the determination of just compensation to the RTC. To repeat, only in an action for expropriation or inverse condemnation proceeding lodged in the RTC, which exercises original and exclusive jurisdiction, can there be a determination of just compensation under Rule 67 of the Rules of Court.

The better approach, as stated in *Forfom*, would be to direct the State – particularly, the City of Naga – in the dispositive portion to forthwith institute the appropriate expropriation action over the land in question, so that just compensation due to the owners may be determined. With such directive, the City of Naga shall be compelled to institute the proper action for expropriation under Rule 67 before the RTC and the issue of determination of just compensation can be properly determined in accordance with the Rules of Court.

Notably, the *ponencia* cites *Secretary of DPWH*<sup>18</sup> and *Republic v. Spouses Nocom*<sup>19</sup> to justify the remand of the case to the RTC for determination of just compensation, even though this case stemmed from an

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<sup>17</sup> *Heirs of Mariano v. City of Naga*, supra note 1 at 540-541.

<sup>18</sup> Supra note 2.

<sup>19</sup> G.R. No. 233988, November 15, 2021.



action for unlawful detainer. However, I disagree that those cases are on all fours with the present case.

For one, *Secretary of DPWH* is not squarely applicable in the present situation because it was not disputed in the said case that the government did not have a valid claim over the lot involved when it took the property; thus, there was unlawful taking of land belonging to a private individual. On the contrary, the government in this case does not even recognize the right of ownership of petitioners.

*Republic v. Spouses Nocom*, likewise, is not applicable. In that case, the Court remanded the case to the lower court for the determination of just compensation.<sup>20</sup> However, it must be emphasized that there was already a separate expropriation proceeding instituted earlier therein, it just so happened that therein respondents were excluded:

On January 25, 1982, the Manila International Airport Authority **instituted expropriation proceedings**, docketed as Civil Case No. 9712-P, for the acquisition of lands for the Ninoy Aquino International Airport (NAIA) expansion program. The Subject Lots, among others, were included in the Complaint for Expropriation and were to be used as additional maintenance and parking space for the aircrafts in NAIA Terminal 1 Taxiway 06/24.

On January 24, 1983, the Regional Trial Court of Pasay City issued a Writ of Possession granting the expropriation of the lots in the complaint. In 1991, due to judicial reorganization, the civil case was transferred to the Regional Trial Court of Makati. On June 21, 1991, the Regional Trial Court of Makati confirmed the expropriation of the lots, including the Subject Lots, with an order for the Manila International Airport Authority to pay just compensation equivalent to [P]552.00/sq.m., plus 6% interest from 1983 until full payment.

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During the appeal, the Manila International Airport Authority filed a **Motion for Exclusion of Lots 2817-A, 2818-A, 2818-B, 2819-A, and 2819-B from the expropriation proceedings** after finding a more appropriate site for their purpose. The motion was granted by the Court of Appeals in a July 21, 1992 Resolution. Thus, the Subject Lots, save for Lot 2817-B, were excluded from the expropriation judgment.<sup>21</sup> (Emphases supplied, citations omitted)

Evidently, while respondents in *Republic v. Spouses Nocom* were excluded, it is undeniable that there was already a separate expropriation

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<sup>20</sup> Id.

<sup>21</sup> Id.

proceeding filed before the RTC. **This is in contrast with the present case where no expropriation proceeding was ever filed before the RTC pursuant to Rule 67 of the Rules of Court.** Thus, in this case, the determination of just compensation simply cannot be remanded to the RTC considering that the case stemmed from an unlawful detainer case, and no expropriation proceeding had ever been filed by the parties.

Indeed, there must be a separate expropriation proceeding initiated to properly determine the amount of just compensation to be awarded to herein petitioners if in case the subject property can no longer be returned by the City of Naga due to the government structures already constructed thereon and the functions undertaken therein. The second stage of the expropriation proceeding requires the full presentation of evidence from both parties to determine the just compensation due to petitioners for the portions of the subject property that cannot be returned by the City of Naga. Verily, this requires a full-blown trial in a separate proceeding, and cannot be done in the same present case.

In this manner of mandatorily requiring the City of Naga to institute a separate action for expropriation against petitioners, the City of Naga can remain on the subject property, without interruption of government functions, and petitioners will be able to receive the just compensation due them.

Finally, if the subject property cannot be returned to petitioners and an expropriation proceeding is filed to award just compensation, it is but proper that the necessary interest be imposed on the just compensation to be received by petitioners. As stated in *Republic v. Spouses Nocom*,<sup>22</sup> it would result in great injustice if this Court grants the prayer that the just compensation be pegged at the value of the subject properties at the alleged time of taking by the government, without any interest imposed. To do so would reward the government for its disregard of procedural due process in its exercise of the power of eminent domain.<sup>23</sup>

In *National Transmission Corp. v. Oroville Development Corp.*,<sup>24</sup> the Court explained that when the government takes private property, the owner's loss is not only his or her property but also on its income-generating potential. Thus, as a rule, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost.<sup>25</sup> The rationale for imposing the interest is to

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<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> 815 Phil. 91, 112 (2017).


<sup>25</sup> The exception wherein the just compensation is computed at the time of the filing of the inverse condemnation proceeding (not the time of taking) is discussed in *National Power Corp. v. Heirs of*

compensate the landowners for the income they would have made had they been properly compensated for their properties at the time of the taking.<sup>26</sup>

Similarly, in *Land Bank of the Philippines v. Heirs of Barrameda*,<sup>27</sup> the Court held that the delay in the payment of just compensation is a forbearance of money. As such, this is necessarily entitled to earn interest. The difference in the amount between the final amount, as adjudged by the court, and the initial payment made by the government — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money.

Accordingly, any just compensation to be received by petitioners in a separate expropriation proceeding should have the accompanying interest computed from the time of the taking.

**WHEREFORE**, I vote to **GRANT** the second motion for reconsideration as respondent City of Naga cannot be ordered to vacate and return the subject property to petitioners. However, pursuant to *Forfom Development Corp. v. Philippine National Railways*, respondent City of Naga is **DIRECTED** to forthwith **INITIATE** a separate expropriation action over the land in question, so that just compensation due to the owners may be determined in accordance with the Rules of Court, with interest at the legal rate of six (6%) percent *per annum* from the time of taking until full payment is made.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

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*Sangkay*, (supra note 10 at 597) because the private owners were unaware of the taking by the government of their private properties.

<sup>26</sup> *National Transmission Corp. v. Oroville Development Corp.*, supra at 112.

<sup>27</sup> G.R. No. 221216, July 13, 2020.